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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

Pamela Cloud, on behalf of herself and all
 others similarly situated,

Plaintiffs,

v.

Real Time Group, Inc.,

Defendant.

Case No. 12-cv-1470 JAH (BLM)

First Amended Complaint

Class Action

Jury Trial Demanded

Plaintiff Pamela Cloud (“Plaintiff”) individually and on behalf of all others similarly situated, makes the following allegations and claims against Real Time Group, Inc. (“Defendant”), upon personal knowledge, investigation of her counsel, and on information and belief.

1. This action seeks redress for business practices that violate the Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227, *et seq.* (“TCPA”).

2. The Court has jurisdiction to grant the relief sought by Plaintiff pursuant to 47 U.S.C. § 227(b) and 28 U.S.C. § 1331.

1 11. Each of the calls placed by Defendant were made by means of an automatic
2 telephone dialing system as defined by the Federal Communications Commission.

3 12. In 1991, Congress enacted the TCPA in response to a growing number of
4 consumer complaints regarding certain telemarketing and debt collection practices. The TCPA
5 regulates, *inter alia*, the use of automated dialing systems. Specifically, section 227(b)(1)(A)(iii)
6 prohibits the use of autodialers to make any call to a wireless number in the absence of an
7 emergency or the prior express consent of the called party.

8 13. According to findings by the Federal Communication Commission (“FCC”), the
9 agency Congress vested with authority to issue regulations implementing the TCPA, such calls
10 are prohibited because, as Congress found, automated or prerecorded telephone calls are a
11 greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly
12 and inconvenient. The FCC also recognized that wireless customers are charged for incoming
13 calls whether they pay in advance or after the minutes are used. *Rules and Regulations*
14 *Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report
15 and Order, 18 FCC Rcd 14014 (2003).

16 14. On January 4, 2008, the FCC issued a Declaratory Ruling confirming that
17 autodialed and prerecorded message calls to a wireless number by a creditor or on behalf of a
18 creditor are permitted only if the calls are made with the “prior express consent” of the called
19 party. *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection*
20 *Act of 1991* (“FCC Declaratory Ruling”), 23 F.C.C.R. 559, 23 FCC Rcd. 559, 43
21 Communications Reg. (P&F) 877, 2008 WL65485 (F.C.C.) (2008).

22 15. The FCC “emphasize[d] that prior express consent is deemed to be granted only if
23 the wireless number was provided by the consumer to the creditor, and that such number was
24 provided during the transaction that resulted in the debt owed.” *FCC Declaratory Ruling*, 23
25 F.C.C.R. at 564-65 (¶10).

26 16. Under the TCPA and pursuant to the FCC’s January 2008 Declaratory Ruling, the
27 burden is on Defendant to demonstrate that Plaintiff gave her express consent to call her cell
28

1 phone within the meaning of the statute. *See FCC Declaratory Ruling*, 23 F.C.C.R. at 565 (¶
2 10).

3 17. Plaintiff never gave her express consent to receive calls on her cellular telephone.

4 18. To the contrary, during several of the calls, Plaintiff clearly and unequivocally
5 instructed Defendant and its agents to stop calling her cell phone.

6 19. Defendant acted willfully or knowingly or both in calling numbers using an
7 autodialer without regard to the TCPA or whether the number was assigned to a cellular
8 telephone.

9 20. At least 25 calls were placed by Defendant or its representatives, contractors, or
10 agents, to Plaintiff's cellular telephone using an automatic telephone dialing system.

11 21. The acts and omissions of unidentified agents were committed within the time and
12 space limits of their agency relationship with their principal, Defendant Real Time Group, Inc.

13 22. The acts and omissions of unidentified agents were incidental to or of the same
14 general nature as the responsibility these agents were authorized to perform by Defendant in
15 collection on consumer debts.

16 23. By committing these acts and omissions against Plaintiff and other Class
17 members, these unidentified agents were motivated to benefit their principal, Defendant Real
18 Time Group, Inc.

19 24. Defendant is therefore liable to Plaintiff and other Class members through the
20 doctrine of respondeat superior for the intentional and negligent acts, errors, and omissions done
21 in violation of law, including but not limited to violations of the TCPA.

22 25. In calling Plaintiff on her cellular telephone lines dozens of times at multiple
23 times per day, Defendant violated 47 U.S.C. § 227(b).

24
25 **Class Action Allegations**

26 26. Plaintiff brings this class action pursuant to Federal Rule of Civil Procedure 23 on
27 behalf of herself and on behalf of all others similarly situated.

28 27. The proposed Class that Plaintiff seeks to represent is defined as follows:

1 All persons within the United States who, on or after June 15, 2008,
2 received an non-emergency telephone call from Defendant to a cellular
3 telephone through the use of an automatic telephone dialing system or an
artificial or prerecorded voice and who did not provide prior express
consent for such calls.

4 28. Collectively, these persons will be referred to as “Class members.” Plaintiff
5 represents, and is a member of, the Class. Excluded from the Class is Defendant and any entities
6 in which Defendant or its subsidiaries or affiliates have a controlling interest, Defendant’s agents
7 and employees, the judicial officer to whom this action is assigned and any member of the court
8 staff and immediate family, and claims for personal injury, wrongful death, and emotional
9 distress.

10 29. Plaintiff does not know the exact number of members in the Class, but based upon
11 Defendant’s public statements regarding its business in the United States, Plaintiff reasonably
12 believes that Class members number at minimum in the hundred thousands. This Class size
13 includes consumers who are borrowers on a mortgage loan serviced or co-serviced by Defendant,
14 as well as persons who co-signed for such debts; other consumer and business loans serviced by
15 Defendant or its affiliates; and all other persons whom Defendant or its affiliates, agents,
16 contractors, or employees dialed (or mis-dialed).

17 30. There are questions of law and fact common to the members of the Class that
18 predominate over any questions affecting only individual members, including, whether
19 Defendant made any call (other than a call made for emergency purposes or made with the prior
20 express consent of the called party) using any automatic telephone dialing system or an artificial
21 or prerecorded voice to any telephone number assigned to a paging service, cellular telephone
22 service, specialized mobile radio service, or other radio common carrier service, or any service
23 for which the called party is charged for the call, in violation of the TCPA.

24 31. Plaintiff’s claims are typical of the claims of the members of the Class. Plaintiff
25 has no interests antagonistic to those of the Class, and Defendant has no defenses unique to
26 Plaintiff.

27 32. Plaintiff will fairly and adequately protect the interests of the Class, and has
28 retained attorneys experienced in class and complex litigation.

1 33. A class action is superior to all other available methods for the fair and efficient
2 adjudication of this controversy for the following reasons:

- 3 a. It is economically impractical for members of the Class to prosecute
4 individual actions;
5 b. The Class is readily definable; and
6 c. Prosecution as a class action will eliminate the possibility of repetitious
7 litigation.

8 34. A class action will cause an orderly and expeditious administration of the claims
9 of the Class. Economies of time, effort, and expense will be fostered and uniformity of decisions
10 will be ensured.

11 35. Class wide relief is essential to compel Defendant to comply with the TCPA. The
12 interest of Class members in individually controlling the prosecution of separate claims against
13 Defendant is small because the statutory damages in an individual action for violation of the
14 TCPA are small. Management of these claims is likely to present significantly fewer difficulties
15 than are presented in many class claims because the calls at issue are all automated and the Class
16 members, by definition, did not provide the prior express consent required under the statute to
17 authorize calls to their cellular telephones.

18 36. Defendant has acted on grounds generally applicable to the Class, thereby making
19 final injunctive relief and corresponding declaratory relief with the respect to the Class as a
20 whole appropriate. Moreover, the TCPA violations complained of herein are substantially likely
21 to continue in the future if an injunction is not entered.

22
23 **First Claim for Relief**

24 37. Plaintiff re-alleges and incorporate by reference the above paragraphs as though
25 set forth fully herein.

26 38. The foregoing act and omissions of Defendant constitute numerous and multiple
27 violations of the TCPA, including but not limited to each of the above-cited provisions of 47
28 U.S.C. § 227 *et seq.*

Prayers for Relief

WHEREFORE, Plaintiff respectfully prays that judgment be entered against Defendant Real Time Resolutions, Inc. for the following:

1. An injunction against the calling of cellular telephones by Defendant and its contractors, agents and employees, except where the cellular telephone subscriber has provided prior express consent to the calls;
2. Damages pursuant to 47 U.S.C. § 227(b)(3);
3. Costs of litigation and reasonable attorneys' fees;
4. Such other and further relief as the Court may deem just and proper.

Dated: June 18, 2012

ANKCORN LAW FIRM, PC

/s/ Mark Ankcorn

Attorneys for Plaintiffs

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/s/ Beth Terrell

Attorneys for Plaintiffs